

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RAUL I. CALDERON,)	4:08CV3128
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
DENNIS BAKEWELL,)	
)	
Respondent.)	

This matter is before the court on Petitioner’s Notices of Appeal (filing nos. [35](#) and [36](#)), Motion for Leave to Appeal In Forma Pauperis (filing no. [53](#)), and several other miscellaneous Motions (filing nos. [103](#), [104](#), [108](#), [109](#), [111](#), and [114](#).)

In his two Notices of Appeal, Petitioner seeks to appeal the court’s August 18, 2008 Memorandum and Order. (Filing No. [21](#).) However, that Memorandum and Order is not a final order, and judgment has not been entered in this matter. Plaintiff’s Notices of Appeal are therefore construed as motions for interlocutory appeal. As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such “controlling question of law” is implicated. The court’s August 18, 2008 Memorandum and Order denied the appointment of counsel, denied Petitioner’s requests for conference calls and assistance from the court, and required Respondent to ensure the safety of Petitioner. (Filing No. [21](#).) None of these decisions involve controlling questions of law as to which there is substantial ground for difference of opinion, and an immediate appeal would not materially advance the ultimate termination of this litigation. Therefore, there is no reason why the present appeals should proceed prior to entry of a final judgment in this matter. For these

reasons, the Notices of Appeal, construed as motions for interlocutory appeal, are denied and Plaintiff's Motion for Leave to Proceed IFP on Appeal and Motion to Stay Proceedings for Interlocutory Appeal are denied as moot.

Petitioner has also filed a Petition for Writ of Mandamus (filing no. [108](#)), Brief in Support (filing no. [110](#)), Motion to Proceed In Forma Pauperis (filing no. [111](#)), and Prisoner Account Statement (filing no. [112](#)). These documents are directed to the Eighth Circuit and the court will direct the Clerk of the court to forward them to the Eighth Circuit Court of Appeals for filing.

Also pending are Petitioner's Motion for Leave to File an Amended Petition (filing no. [103](#)), Motion for Evidentiary Hearing (filing no. [104](#)), and Motion to Produce (filing no. [114](#)). Respondent filed a Motion for Summary Judgment on September 2, 2008. (Filing No. [33](#)). In that Motion, Respondent argues that Petitioner's claims are time-barred. If Respondent is correct, then amending those claims would be futile. Therefore, the court will not allow amendment of the Petition at this time. Petitioner has until November 28, 2008 to respond to the Motion for Summary Judgment. (Filing No. [102](#).) In the event that the Motion for Summary Judgment is denied, and the court intends to reach the merits of the Petition, Petitioner may seek to amend his claims at that time. The Motion for Leave to Amend is therefore denied without prejudice.

Petitioner's Motion for Evidentiary Hearing and Motion to Produce are likewise denied. In the nearly five months since the filing of the Petition in this matter, Petitioner has filed approximately 50 Motions, most of which are duplicative, frivolous, and/or nonsensical. These two Motions fit into the categories of "duplicative" and "nonsensical," respectively. In light of his abusive motion practice, Petitioner shall not file any motion without first seeking leave of the court to do so. In any motion for leave, Petitioner shall set forth in detail the relief sought, and any information relevant to the motion. Leave will not be freely granted. The court

strongly encourages Petitioner to focus on filing his response to the Motion for Summary Judgment rather than filing frivolous and duplicative motions.

IT IS THEREFORE ORDERED that:

1. Petitioner's Notices of Appeal (filing nos. [35](#) and [36](#)), construed as motions for interlocutory appeal, are denied.

2. Petitioner's Motion for Leave to Appeal In Forma Pauperis (filing no. [53](#)) and Motion to Stay Proceedings for Interlocutory Appeal (filing no. [109](#)) are denied as moot.

3. The Clerk of the court is directed to forward Petitioner's Petition for Writ of Mandamus (filing no. [108](#)), Brief in Support (filing no. [110](#)), Motion to Proceed In Forma Pauperis (filing no. [111](#)), and Prisoner Account Statement (filing no. [112](#)) to the Eighth Circuit Court of Appeals.

4. Petitioner's Motion for Leave to File an Amended Petition (filing no. [103](#)), Motion for Evidentiary Hearing (filing no. [104](#)), and Motion to Produce (filing no. [114](#)) are denied. The Motion for Leave to File an Amended Petition is denied without prejudice to reassertion after Respondent's Motion for Summary Judgment is resolved.

5. Petitioner shall not file any motion without first seeking leave from the court to do so.

November 7, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge